IN THE HIGH COURT OF JUDICATURE AT BILASPUR,

CHHATTISGARH Division Bench

WRIT PETITION NO.2424 OF 2005

PETITIONER:

Bailadila Berozgar Sangh
Through its : President Sheikh Aziz, S/o M.D. Gouse Pasha, Aged about 36 years, R/o Near Bus Stand, Kirandol, District Dantewada (South Bastar) (Chhattisgarh).

Versus

RESPONDENTS:

1. National Mineral Development Corporation Limited,
Through its : Chairman-Cum-Managing Director, Masab Tank, Hyderabad (Andhra Pradesh).

2. General Manager,
Bailadila Iron Ore Project, National Mineral Development Corporation Limited, Kirandol, Dist. Dantewada (South Bastar) (Chhattisgarh).

P.R. No. 2420/05
Presented by Shri H.S. Patel
dated 01.06.05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1. **PARTICULARS OF THE PETITIONER:**

As shown in the cause title.

2. **PARTICULARS OF THE RESPONDENTS:**

As shown in the cause title.

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM : **Hon'ble Shri A.K. Patnaik, C.J.**
& **Hon'ble Shri Satish K. Agnihotri, J**

WRIT PETITION NO. 2424 OF 2005

Bailadila Berozgar Sangh

Versus

National Mineral Development Corporation Limited

Present : Mr. B.D. Guru, learned counsel for the petitioner.
Mr. P.S. Koshy, learned counsel for the respondents.

ORDER

(Passed on 11th August, 2005)

The following oral order of the Court was passed by **A.K. Patnaik, C.J :-**

The petitioner is an association of unemployed youth of Bailadila and has filed this writ petition as a Public Interest Litigation (PIL). The petitioner has stated in the writ petition that the National Mineral Development Corporation (hereinafter referred to as "Corporation") / respondent No.1 is a Corporation owned by the Government of India and comes within the definition of "State" in Article 12 of the Constitution of India. The Corporation has an Iron Ore project in Bailadila and for the said project the Corporation has sent a requisition to the Directorate of Employment & Training, Chhattisgarh for recruitment to the post of Maintenance Assistants (Trainee) and pursuant to the said notification the Directorate of Employment & Training, Chhattisgarh has issued a

notification of vacancies in the post of Maintenance Assistants (Trainee) under the Corporation. In the said notification of vacancies, the maximum age limit of candidates for the recruitment is mentioned as 30 years with a provision for relaxation up to 5 years in case of SC/ST candidates and 3 years in case of OBC candidates. In the said notification it is also stated that women candidates are ineligible for the post. Aggrieved, the petitioner has filed this writ petition under Article 226 of the Constitution praying for quashing the said notification and for directing the Corporation to fix the maximum age limit for the candidates as 35/40 years and to provide reservation for SC/ST and other OBC candidates and to allow women candidates to submit their applications for recruitment to the vacancies.

(2) Mr. B.D. Guru, learned counsel for the petitioner submitted that the Corporation has not made any recruitment of the workmen for the last ten years and most of the local unemployed youth have grown beyond the maximum age of 30 years stipulated in the notification and for this reason the stipulation in the notification that the maximum age limit of 30 years for recruitment to the post of Maintenance Assistants (Trainee) should be struck down and a direction be given to the Corporation to increase the maximum age limit of the candidates to 35/40 years. He next submitted that there is no provision regarding reservation for SC/ST and OBC candidates and such a provision for reservation for SC/ST and OBC candidates should have been made under Article 16(4) of the Constitution. He finally submitted that the notification in so far as it prohibits altogether a woman candidate to apply for the post of Maintenance Assistants (Trainee) is discriminatory and is violative of Articles 14 and 16 of the

Constitution and the same should be struck down and the Corporation be directed to allow women candidates as well to apply for the said post.

(3) Mr. P.S. Koshy, learned counsel for the respondents, on the other hand, submitted relying on the averments in the reply filed on behalf of respondents that the maximum age limit for recruitment to Group 'C' and Group 'D' posts in the Corporation has already been increased from 25 years to 30 years for the general category candidates and the respondents after taking into consideration all relevant aspects have determined the maximum age limit for recruitment for general candidates as 30 years as a matter of policy. He further submitted that the notification made by the Directorate of Employment & Training, Chhattisgarh pursuant to the requisition would itself show that out of 30 vacant posts of Maintenance Assistants (Trainee) for which recruitment is to be made, 4 posts have been reserved for SC, 6 posts have been reserved for ST and 3 posts have been reserved for OBC candidates and the remaining 17 posts are for the general candidates. Regarding women candidates, Mr. Koshy submitted, relying on the averments made in the reply of the respondents, that under Section 46 of the Mines Act, 1952 there is a prohibition for engaging women workers in any part of the mines below the ground and in any part of the mines above the ground except between 6 A.M. to 7 P.M. He submitted that in view of the said provision in Section 46 of the Mines Act, 1952 the respondents had in the requisition sent to the Employment Exchange for recruitment of Maintenance Assistants (Trainee) specified that women candidates are not eligible. He further submitted that it is not as if the Corporation has a discriminatory policy towards women candidates and as a matter of fact there are about 150 women employees in the Bailadila complex of the Corporation. He

submitted that the Supreme Court has in **P.U. Joshi & Others vs. Accountant General, Ahmedabad & Others** reported in **(2003) 2 SCC 632** held that questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation and abolition, prescription of qualifications and other conditions of service pertain to the field of policy and are within the exclusive discretion and jurisdiction of the State and in such matters the Courts have limited powers of the judicial review. He also cited the decision of the Supreme Court in **Dhan Singh & Others vs. State of Haryana & Others** reported in **1991 (2) SCC 190** for the proposition that mere differentiation or inequality of protection does not per se amount to discrimination within the inhibition of equal protection clause under Article 14 of the Constitution and to attract the attention of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the legislature has in view. He submitted that in the present case there was a justification for not allowing women candidates to apply for recruitment to the vacancies of Maintenance Assistants (Trainee) inasmuch as there was prohibition under Section 46 of the Mines Act, 1952 to employ women in mines below the ground and also in mines above the ground beyond certain hours of the day. Mr. Koshy also cited the decision of the Supreme Court in **Air India vs. Nergesh Meerza & Others and other connected** cases reported in **(1981) 4 SCC 335** in which the Supreme Court has held that Articles 15(1) and 16(2) of the Constitution prohibit discrimination on the ground of sex only and not on grounds of sex coupled with other considerations and upheld the differences in conditions of service, allowances and other types of remuneration for women and men employed under the Air India.

(4) Mr. Koshy is right in his submission that recruitment and the eligibility criteria for recruitment to any post is a matter within the domain of the State and that Courts will not normally interfere in exercise of their powers of judicial review with the decisions of the State in such matters regarding eligibility for recruitment. But the power of the State even with regard to recruitment and eligibility for recruitment is to be exercised subject to the limitations of the law and the Constitution including the provisions relating to fundamental rights enshrined in Part III the Constitution. In **P.U. Joshi & Others vs. Accountant General, Ahmedabad & Others** (supra) on which Mr. Koshy has placed a reliance, the Supreme Court has clarified that the discretion and jurisdiction of the State in such matters is of course subject to the limitations or restrictions envisaged in the Constitution. Hence, even though recruitment and eligibility criteria for recruitment are matters of policy for the State to determine, the Courts can always interfere with the decisions of the State in such matters of policy if Constitutional and Statutory limitations are violated by the State.

(5) As to what should be the maximum age limit of a candidate for the post of Maintenance Assistants (Trainee) under the Corporation is purely a matter of policy for the Corporation to decide. No provision of the Constitution and no provision of any law has been brought to our notice by Mr. Guru, learned counsel for the petitioner to show that the Corporation was obliged to fix the maximum age limit of the candidate for the post of Maintenance Assistants (Trainee) at 35/40 years. The only ground indicated by the petitioner in the writ petition is that for several years there has been no recruitment and for this reason the Corporation should have fixed the maximum age limit for recruitment to the post of Maintenance

Assistants (Trainee) at 35/40 years. It was for the Corporation to take all relevant facts into account and decide as to what would be maximum age limit for candidates for the post of Maintenance Assistants (Trainee) and it appears that the Corporation has already considered the relevant facts and taken a decision to enhance the age limit for the candidates for recruitment to different Group 'C' and Group 'D' posts including the post of Maintenance Assistants (Trainee) from 25 years to 30 years. We do not think we can, in exercise of powers of judicial review, interfere with this decision of the Corporation in a purely policy matter with regard to recruitment.

(6) Regarding reservation for SC/ST and OBC candidates, we find on a bare perusal of the notification of vacancies made by the Directorate of Employment & Training, Chhattisgarh pursuant to the requisition of the Corporation that out of the 30 vacancies in the post of Maintenance Assistants (Trainee) notified, 4 posts have been reserved for SC candidates, 6 posts have been reserved for ST candidates, 3 posts have been reserved for OBC and 17 posts are meant for general candidates. Hence, the ground taken in the writ petition that there is no reservation made for the SC/ST and OBC candidates is factually misconceived.

(7) Coming now to the challenge to discrimination on the ground of sex, Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 16 (1) of the Constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and Article 16(2) of the Constitution further provides that no citizen shall on grounds only of

religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of any employment or office under the State. A reading of the aforesaid provisions of Articles 14 and 16 of the Constitution would show that in matters of recruitment to employment, the State will not discriminate between men and women and that a citizen will not be ineligible for employment or office under the State on the ground of sex only. It is not disputed that the Corporation is an instrumentality of the State and comes within the definition of the State under Article 12 of the Constitution and that the equality provisions in Articles 14 and 16 of the Constitution apply to employment under the Corporation. Therefore, a woman citizen cannot be made ineligible for any employment under the Corporation on the ground of sex only but could be excluded from a particular employment under the Corporation if there are other compelling grounds for doing so.

(8) The notification of vacancies issued by the Directorate of Employment & Training, Chhattisgarh, however, states that women candidates are ineligible to apply for the post of Maintenance Assistants (Trainee). The justification given for excluding women candidates from applying for the post of Maintenance Assistants (Trainee) in the reply of the respondents is that under Section 46 of the Mines Act, 1952 there are some restrictions with regard to employment of women in mines. Section 46 of the Mines Act, 1952 is quoted herein below:

> "46. Employment of women.- (1) No woman shall, notwithstanding anything contained in any other law, be employed-
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> (a) in any part of mine which is below ground;
>
> (b) in any mine above ground except between the hours of 6. a.m. and 7 p.m.

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(2) Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, by notification in the Official Gazette, vary the hours of employment above ground of women in respect of any mine or class or description of mine, so however that no employment of any woman between the hours of 10 p.m. and 5 a.m. is permitted thereby."

It will be clear from Section 46 quoted above that the said Section does not altogether prohibit employment of women in the mines above the ground though it prohibits employment of women in any part of the mine below the ground. The Section however puts a restriction on employment of women above the ground saying that they can be employed only between 6 a.m. and 7 p.m. Sub-section (3) of Section 46 quoted above, however, states that the Central Government may, by notification in the Official Gazette, vary the hours of employment above the ground of women in respect of any mine or class or description of mine, so however, that no employment of any women between the ours of 10 p.m. and 5 a.m. is permitted thereby. This provision putting restrictions on the employment of women above the ground is a special provision made for women. Such a provision, in our considered opinion, cannot be relied on by the Corporation to prohibit recruitment of women altogether for the post of Maintenance Assistants (Trainee) in the Corporation to the disadvantage of the women.

(9) In **Dhan Singh & Others vs. State of Haryana & Others** (supra) cited by Mr. Koshy, the Supreme Court has held that to attract the mandate of Article 14 of the Constitution, it is necessary to show that the

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selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the legislature has in view. It is not stated in the notification nor in the reply filed by the respondents that all the 30 Maintenance Assistants (Trainee) for which the notification has been issued are to be employed exclusively in mines below the ground. Section 46 of the Mines Act, 1952 permits employment of women in the mines above the ground during 6 a.m. to 7 p.m. and sub-Section (3) of Section 46 further provides that the Central Government may, by notification in the Official Gazette, permit such employment of women even beyond the hours from 6 a.m. to 7 p.m., but not between 10 p.m. and 5 a.m. To deny women the opportunity to apply for and to be considered for employment as Maintenance Assistants (Trainee) under the Corporation on the ground that Section 46 of the Mines Act, 1952 imposed some restrictions would be discriminatory towards women on the ground of sex and violative of the provisions of Articles 14,16 (1) and 16 (2) of the Constitution. The stipulation in the notification denying women altogether from applying for the post of Maintenance Assistants (Trainee) under the Corporation would be unreasonable and arbitrary and does not rest on any rational basis.

(10) In **Air India vs. Nergesh Meerza & Others and other connected cases** (supra), the Supreme Court has held that in matters of allowances, conditions of service and other remuneration of women and men employees under the Air India, no discrimination is made on the ground of sex only. But the Supreme Court has also taken note of the views of Mr. Krishna Iyer, J. in Miss C.B. Muthamma vs. Union of India, (1979) 4 SCC 260 to the effect that unless sensitivities of sex or the peculiarities of social sectors or the handicaps of either sex may compel

selectivity and a case for differentiation is demonstrably made out, the rule of equality must govern. In the language of Mr. Krishna Iyer, J.

> "We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern."

In the present case, the respondents have not been able to show demonstrably in their pleadings that the handicaps or other sensitivities of sex or the peculiarities of social sectors had compelled the Corporation to prohibit the women altogether from applying for the post of Maintenance Assistants (Trainee). On the other hand, as we have indicated above, they have justified the denial of opportunity to women from applying for employment under the Corporation as Maintenance Assistants (Trainee) only on the basis of provisions in Section 46 of the Mines Act, 1952, which we have seen, do not altogether exclude the employment of women in mines above the ground.

(11) For the aforesaid reasons, while we decline to interfere with the provisions regarding maximum age for candidates for the post of Maintenance Assistants (Trainee) under the Corporation, we declare the provision in the notification prohibiting women candidates altogether to apply for the said post of Maintenance Assistants (Trainee) as ultra vires Articles 14 and 16 of the Constitution and direct the Corporation to allow women candidates also to apply for the said posts. The recruitment process to the posts of Maintenance Assistants (Trainee) will now be initiated afresh after inviting fresh applications from intending candidates.

The writ petition is disposed of with the aforesaid directions, but considering the facts and circumstances, the parties shall bear their own costs.

Sd/-
Chief Justice
Judge

Sd/-
Satish K. Agnihotri
Judge

Sarma